

NOT FOR PUBLICATION

MAY 10 2007

HAROLD S. MARENUS, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUITUNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:) BAP No. NC-06-1255-KuBS
)
SAN JOSE MEDICAL MANAGEMENT,) Bk. No. 02-55527
)
INC., a California Corporation) and Affiliated Chapter 11
) Cases,
)
) Debtors.
)
_____)
UECKER & ASSOCIATES, INC., as)
) Trustee of the San Jose
) Medical Group Trust for the
) Benefit of Creditors,
)
) Appellant,
)
v.)
)
THOMAS LEI,)
)
) Appellee.
_____)

M E M O R A N D U M¹

Argued and Submitted on February 23, 2007
at San Francisco, California

Filed - May 10, 2007

Appeal from the United States Bankruptcy Court
for the Northern District of California

Honorable James R. Grube, Bankruptcy Judge, Presiding

Before: KURTZ,² BRANDT and SMITH, Bankruptcy Judges

¹ This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

² Hon. Frank L. Kurtz, Chief Bankruptcy Judge for the Eastern District of Washington, sitting by designation.

1 One day after San Jose Medical Group ("Medical Group") filed
2 its petition for chapter 11 relief, Dr. Thomas D. Lei notified
3 Medical Group that he was exercising his right under their
4 employment contract to terminate his employment, upon 90 days'
5 notice, without cause. One month later, Medical Group notified Dr.
6 Lei that it was exercising its right under their employment contract
7 to terminate his employment, without notice, for cause. Dr. Lei
8 filed a proof of claim asserting that Medical Group had wrongfully
9 terminated him and owed him two months' wages. The trustee for the
10 San Jose Medical Group Trust for the Benefit of Creditors
11 ("Trustee"), established by the confirmed plan, filed an objection
12 to Dr. Lei's proof of claim. After a trial, the bankruptcy court
13 ruled that Dr. Lei was wrongfully terminated, allowed his proof of
14 claim, and overruled the Trustee's objection.

15 On appeal, the Trustee contends the bankruptcy court applied
16 the wrong legal standard when it ruled that Medical Group wrongfully
17 terminated Dr. Lei. The legal standard applied by the court
18 required the Trustee to prove actual misconduct justifying
19 termination. Instead, the Trustee argues, the court should have
20 applied a legal standard that required the Trustee to prove only
21 that Medical Group acted in good faith, upon an honest belief that
22 misconduct had occurred, and after a reasonable investigation. We
23 conclude the bankruptcy court followed binding precedent and applied
24 the correct legal standard. For that reason, we affirm the judgment
25 of the bankruptcy court.

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1 Soon after starting his work with Medical Group, Dr. Lei
2 learned that it was experiencing financial difficulties. This was
3 a decade-long problem for Medical Group. At some point, Medical
4 Group's financial condition became so serious that it became obvious
5 to its employees that Medical Group was contemplating reorganization
6 in bankruptcy. Before filing, Medical Group's management met with
7 its employees and, separately, with its physicians. At the
8 physicians-only meeting, Dr. Lei expressed reservations about the
9 propriety of Medical Group filing for bankruptcy. After the
10 meeting, he was stopped by Dr. Didvech, who informed him that he
11 needed to be more positive about Medical Group's prospects for
12 reorganization in bankruptcy. Dr. Didvech expressed concern that
13 negative comments could impact Medical Group's ability to retain its
14 employed physicians.

15 On September 30, 2002, Medical Group filed a petition for
16 chapter 11 relief. The following day, Dr. Lei submitted his letter
17 of resignation, effective December 31, 2002, exercising his rights
18 under the employment contract to terminate the contract, without
19 cause. Later, at trial, Dr. Lei testified that he was motivated to
20 resign by his family's reaction to learning about his employer's
21 bankruptcy in the local newspaper and by his concern about Medical
22 Group's inability to obtain the services of consulting specialists
23 for his patients. Apparently, outside physicians were reluctant to
24 consult with Medical Group's physicians, due to Medical Group's
25 reputation for slow payment of outside consultant's bills.

26 On October 28, 2002, less than one month after Dr. Lei notified
27 Medical Group of his resignation, it terminated Dr. Lei, effective
28 October 31, 2002. Medical Group was purportedly exercising its

1 right under the contract to terminate Dr. Lei's employment for
2 cause. The two-sentence termination letter neither provided an
3 explanation nor stated any cause for the termination. Later, Dr.
4 Didvech testified that he did not include the reasons for
5 terminating Dr. Lei in the October 28 letter in order to prevent
6 public dissemination of that information.

7 Dr. Lei submitted two claims in Medical Group's bankruptcy
8 case. The first claim asserted fraud in the inducement of a
9 contract and damages in an unliquidated amount. The second claim,
10 at issue here, asserted breach of his employment contract and
11 damages of \$36,416.68—the wages he would have earned had his
12 employment not been terminated. The Trustee objected to Dr. Lei's
13 claim for unpaid wages, alleging that the claim was not supported
14 by the debtors' books and records.

15 At trial, Dr. Filuk and Dr. Didvech stated Medical Group's
16 reasons for firing Dr. Lei. Dr. Didvech testified that the
17 immediate cause for Dr. Lei's termination was his conduct after
18 Medical Group filed for chapter 11. Dr. Didvech stated that he
19 received reports that Dr. Lei was speaking negatively about Medical
20 Group and casting doubts about its future. On October 8, Dr.
21 Didvech met with Dr. Lei and advised him to stop this behavior.
22 When the behavior did not cease, according to Dr. Didvech, Medical
23 Group made the decision to terminate Dr. Lei. "[H]e was somebody
24 that we didn't want to keep around for another day at that point."
25 (Hr'g Tr. 34, May 16, 2006).

26 In support of his firing of Dr. Lei, Dr. Didvech offered other
27 bases for the dismissal. Dr. Didvech testified that he received
28 negative reports regarding Dr. Lei's performance from the very

1 beginning of Dr. Lei's employment. Most of the initial reports
2 concerned Dr. Lei's refusal to see internal medicine patients.
3 According to Dr. Didvech, Dr. Lei was obligated to see primary care
4 patients until his caseload was filled with patients within his
5 specialty. Dr. Lei refused to be a primary care doctor. Dr.
6 Didvech discussed this issue with Dr. Lei, but according to Dr.
7 Didvech, Dr. Lei was "pretty adamant" that he was not interested in
8 seeing these patients. Id. at 30

9 Dr. Didvech testified that there were a number of other
10 complaints regarding Dr. Lei's performance as a hired physician.
11 He received reports that Dr. Lei was refusing to work as a
12 hospitalist— a physician who saw patients in the hospital. Also,
13 there were complaints that Dr. Lei was not cooperative with other
14 physicians who wanted to transfer their patients to the Intensive
15 Care Unit and to his immediate responsibility. Additionally, Dr.
16 Didvech heard that Dr. Lei did not respond in a timely manner to
17 nurses' pages.

18 On cross-examination, Dr. Didvech admitted that he did not
19 investigate the pre-bankruptcy complaints regarding Dr. Lei's job
20 performance. Essentially, he was reporting complaints that he
21 received from other people, including Dr. Filuk. On one occasion,
22 he spoke with Dr. Lei regarding Dr. Lei's reluctance to accept
23 internal medicine patient referrals and, on another occasion, he
24 spoke "in passing" to Dr. Lei regarding Dr. Lei's refusal to perform
25 the duties of a hospitalist. But Dr. Didvech conceded that he did
26 not prepare a memo or issue a warning to Dr. Lei regarding these
27 complaints. In fact, there is nothing in writing regarding these
28 complaints and they do not appear in Dr. Didvech's letter of

1 termination to Dr. Lei.

2 Dr. Filuk testified that, as Dr. Lei's immediate supervisor,
3 he received a number of complaints regarding Dr. Lei's work. Dr.
4 Lei's duties included the obligation to consult with other
5 physicians and to accept referrals from these physicians. Dr. Filuk
6 reported that he received complaints from other physicians that Dr.
7 Lei was reluctant to accept these referrals and that he was not
8 attentive to the referred patients. Similarly, nurses complained,
9 according to Dr. Filuk, about Dr. Lei's bedside manner. In general,
10 Dr. Filuk testified that the complaints were about Dr. Lei's
11 attitude, attendance, and performance.

12 On cross-examination, Dr. Filuk conceded that he did not
13 independently investigate the complaints about Dr. Lei. The
14 complaints are undocumented by him or anybody else. Moreover, he
15 never discussed the complaints with Dr. Lei. Dr. Filuk limited his
16 role to communicating the complaints about Dr. Lei to Dr. Didvech.

17 In response to the testimonies of his medical colleagues, Dr.
18 Lei testified regarding his termination by Medical Group. At the
19 time of dismissal, he was not told he was being terminated for
20 cause. According to Dr. Lei, Dr. Didvech simply referenced Medical
21 Group's financial problems and the bankruptcy as the reasons for his
22 dismissal.

23 Dr. Lei also testified about his understanding of his position
24 at Medical Group. His understanding was based primarily upon what
25 he was told at his interview. He would be a specialist—a chest
26 doctor—but he was also obligated to see or treat some internal
27 medicine patients. At the hospital, while he was making rounds or
28 on call, he would see or treat some internal medical patients.

1 Furthermore, he was a critical care specialist and, in that
2 capacity, he would consult and, if needed, treat Medical Group's
3 critical care patients. At the clinic, his practice would be
4 limited to pulmonary cases. When physicians referred internal
5 medicine cases to Dr. Lei at the clinic, he complained to Dr.
6 Didvech. Dr. Lei argued that it would be more cost effective to
7 refer such patients to a general internist. However, Dr. Lei denied
8 that he ever refused to take a call regarding an internal medicine
9 patient, or that he ever refused to accept a referral for such a
10 patient. In summary, Dr. Lei disputed the testimonies of Dr.
11 Didvech and Dr. Filuk regarding his treatment of the internal
12 medicine patients who were referred to him.

13 After hearing and considering the evidence, the court issued
14 an oral ruling. The court ruled the contract between Medical Group
15 and Dr. Lei was a "term contract," subject to the provisions of
16 California Labor Code § 2924, which provides:

17 An employment for a specified term may be terminated at
18 any time by the employer in case of any willful breach of
19 duty by the employee in the course of his employment, or
in case of his habitual neglect of his duty or continued
incapacity to perform it.

20 Cal. Lab. Code § 2924. Emphasizing the statute's requirement for
21 a willful breach, the court decided that the Trustee failed to
22 establish by a preponderance of the evidence that Dr. Lei's conduct
23 satisfied the provisions of section 2924 and authorized his
24 termination.

25 The court then addressed the Trustee's contention that the
26 employment contract's failure to define "for cause" in subsection
27 4.3.5 means that the parties to the contract are bound by the
28 definition of "good cause" stated in Cotran v. Rollins Hudig Hall

1 International, Inc., 948 P.2d 412 (Cal. 1998). Cotran's definition
2 of good cause incorporates a good faith standard for judging an
3 employer's termination decision: a reasoned conclusion, supported
4 by substantial evidence, gathered through an adequate investigation
5 that includes notice of the claimed misconduct and a chance for the
6 employee to respond. Id. at 422. Under the Cotran good faith
7 standard, both actual misconduct committed by the employee and an
8 honest but mistaken belief by the employer that misconduct has
9 occurred are sufficient for termination. Id. at 421.

10 In rejecting the Trustee's contention, the court identified
11 Khajavi v. Feather River Anesthesia Medical Group, 100 Cal. Rptr.
12 2d 627 (Ct. App. 2000), and not Cotran as controlling precedent.
13 Khajavi holds that the Cotran good faith standard is limited to
14 implied employment contracts and does not extend to contracts for
15 a specified term, like Dr. Lei's contract. Khajavi, 100 Cal. Rptr.
16 2d at 644. Khajavi further holds that an employee who has a
17 contract for a specified term may not be terminated prior to the
18 term's expiration based on an honest but mistaken belief that the
19 employee breached the contract. Id. at 644-645. Finally, the court
20 ruled that the Trustee failed to establish by a preponderance of the
21 evidence that Dr. Lei's conduct violated the contract's "for cause"
22 provisions.

23 The Trustee timely appealed.

24

25 II. JURISDICTION

26 Bankruptcy courts are authorized to "hear and determine" "cases
27 under title 11" and "core proceedings" arising under title 11. 28
28 U.S.C. § 157(b)(1). An objection to claim is a core proceeding that

1 a bankruptcy judge has power to hear and determine. Id.
2 § 157(b) (2) (B). The Bankruptcy Appellate Panel has appellate
3 jurisdiction over the final order determining an objection to claim.
4 28 U.S.C. § 158(b).

6 **III. ISSUE**

7 Whether the court applied the correct standard for good cause
8 when it determined that Medical Group did not have good cause to
9 terminate Dr. Lei.³

11 **IV. STANDARD OF REVIEW**

12 The Bankruptcy Appellate Panel reviews conclusions of law and
13 questions of statutory interpretation de novo, and findings of fact
14 for clear error. Rule 8013; In re Mednet, 251 B.R. 103, 106 (9th
15 Cir. BAP 2000). A factual finding is clearly erroneous if the
16 appellate court, after reviewing the record, has a firm and definite
17 conviction that a mistake has been committed. Anderson v. City of
18 Bessemer City, 470 U.S. 564, 573, 105 S. Ct. 1504, 84 L. Ed. 2d 518
19 (1985). "The 'basic federal rule' in bankruptcy is that state law
20 governs the substance of claims[.]" Raleigh v. Illinois Dep't of
21 Rev., 530 U.S. 15, 20, 120 S. Ct. 1951, 147 L. Ed. 2d 13 (2000).
22 Determination of contract rights by the bankruptcy court ordinarily

23
24 ³ The employment agreement uses the term "for cause." The
25 issue on appeal is whether the court applied the correct standard
26 for "good cause." "For cause" means for a legal reason or ground.
27 Black's Law Dictionary 673 (8th ed. 2004). For example, Dr. Lei
28 was terminated for cause, as opposed to "by mutual agreement" or
because the term of his contract expired. "Good cause" means a
legally sufficient reason. Id. at 235. In the claims litigation,
the Trustee asked the court to rule that Medical Group terminated
Dr. Lei for good cause.

1 is controlled by state law. Butner v. United States, 44 U.S. 48,
2 54, 99 S. Ct. 914, 59 L. Ed. 2d 136 (1979). Under California law,
3 the interpretation of a contract is a question of law, subject to
4 de novo review. In re Bennett, 298 F.3d 1059, 1064 (9th Cir. 2002);
5 In re Bartleson, 253 B.R. 75, 79 (9th Cir. BAP 2000).

6 7 **V. ANALYSIS**

8 In this appeal, the Trustee is challenging the legal standard
9 applied by the trial court to determine whether Medical Group
10 wrongfully terminated Dr. Lei. Essentially, the question is: what
11 must an employer prove in order to establish good cause to fire an
12 employee? More specifically, must the employer establish that the
13 employee actually committed the misconduct—the standard adopted by
14 the trial court—or may the employer merely establish that the
15 employer acted in good faith, after an appropriate investigation,
16 upon reasonable grounds for termination?

17 Courts that have considered the issue have disagreed. Some
18 courts have adopted the actual misconduct standard, reasoning that
19 the employee bargained for the right to be dismissed only for good
20 cause and that this right would be undermined by a standard that
21 relieved the employer of the burden of proving misconduct.
22 Toussaint v. Blue Cross & Blue Shield of Mich., 408 Mich. 579, 651,
23 292 N.W.2d 880 (1980). Other courts have adopted the good faith
24 standard, reasoning that the actual misconduct standard is too
25 onerous and inappropriately allows the court to second guess an
26 employer's business decision. Baldwin v. Sisters of Providence in
27 Wash., Inc., 112 Wn.2d 127, 134, 769 P.2d 298 (1989); Simpson v.
28 Western Graphics Corp., 293 Or. 96, 100, 643 P.2d 1276 (1982); Life

1 Care Centers v. Dexter, 65 P.3d 385, 392-93 (Wyo. 2003); Almada v.
2 Allstate Ins. Co., 153 F. Supp. 2d. 1108, 1114 (D. Ariz. 2000). The
3 good faith standard appears to be the majority rule. Towson Univ.
4 v. Conte, 384 Md. 68, 86, 862 A.2d 941 (2004).

5 In California, the issue is made more complicated by labor laws
6 regulating termination of employees. For example, Cal. Lab. Code
7 § 2922 creates a presumption that an employment relationship is at
8 will and, consequently, provides that the relationship may be
9 terminated without cause upon notice by either party. The reach of
10 section 2922 has been sharply limited, however, by the case law
11 development of the doctrine of the "for cause" implied contract.
12 In these cases, the employee argues that there was an understanding
13 that he or she would not be fired without "good cause." Based upon
14 a number of factors, like the employee's length of service, oral
15 assurances of continued employment, and personnel policies
16 protecting job security, courts have found an implied in fact
17 contract not to terminate the employee without cause. Foley v.
18 Interactive Data Corp., 765 P.2d 373, 383-389 (1988); Pugh v. See's
19 Candies, Inc., 171 Cal. Rptr. 917 (1981).

20 By contrast, there is a different statute and a different set
21 of rules for the termination of employees under a specified term
22 contract (greater than one month). Cal. Lab. Code § 2924. Section
23 2924 provides that if the employment is for a specified term,
24 termination is allowed, provided there has been a "willful breach
25 of duty by the employee," "habitual neglect of his duty," or
26 "continued incapacity to perform." Id. § 2924. The statute
27 requires proof of the conduct that authorizes termination. An
28 employer's honest but mistaken belief that the misconduct has

1 occurred is insufficient. Khajavi, 100 Cal. Rptr. 2d at 645.

2 For implied employment contracts, the California Supreme Court
3 has rejected the actual misconduct standard in favor of the good
4 faith standard. Cotran, 948 P.2d at 422. In Cotran, after an
5 investigation, the employer fired the employee based upon
6 accusations that the employee had sexually harassed two fellow
7 employees. Id. at 415. The employee denied that he committed the
8 sexual harassment and brought suit against his employer for wrongful
9 termination. Although the parties had not executed an express
10 employment contract, the court interpreted a letter exchanged
11 between the parties as an implied employment agreement providing
12 that Mr. Cotran could not be terminated unless good cause existed.
13 Id. at 414. After a trial, a jury determined that Mr. Cotran had
14 not engaged in any conduct that would have justified the termination
15 and awarded Mr. Cotran a large judgment for lost compensation. Id.
16 at 416.

17 On appeal, the employer argued that the employer should be
18 relieved of the burden of proving that actual misconduct occurred.
19 Rather, the employer should be required to prove only that the
20 employer acted in good faith, upon an honest belief that the sexual
21 harassment had occurred, and after conducting a reasonable
22 investigation. Id. at 413-414. The California Supreme Court agreed
23 and adopted an objective good faith standard for implied contract
24 employment cases. The court ordered a new trial and stated "the
25 question critical to the defendants' liability is not whether
26 plaintiff in fact sexually harassed other employees, but whether at
27 the time the decision to terminate his employment was made,
28 defendants, acting in good faith and following an investigation that

1 was appropriate under the circumstances, had reasonable grounds for
2 believing plaintiff had done so." Id. at 422.

3 In addition to adopting a good faith standard for implied
4 contract cases, the court created a definition of "good cause" to
5 apply in litigation involving breach of an implied employment
6 contract. The Cotran court stated, "good cause" can be defined as:

7 [F]air and honest reasons, regulated by good faith on the
8 part of the employer, that are not trivial, arbitrary or
9 capricious, unrelated to business needs or goals, or
10 pretextual. A reasoned conclusion, in short, supported
by substantial evidence gathered through an adequate
investigation that includes notice of the claimed
misconduct and a chance for the employee to respond.

11 Id. Here, the Trustee argues the Cotran definition of "good cause"
12 is the default definition for "good cause" or "for cause" if those
13 terms are undefined in an employment contract. Because Dr. Lei's
14 employment contract uses the term "for cause," but fails to define
15 the term, the term is defined by Cotran.

16 In a footnote to its decision, the Cotran court suggested that
17 its holding might not apply to other kinds of contracts.⁴
18 Thereafter, the California Court of Appeals accepted Cotran's
19 invitation to follow a different path and applied the actual
20 misconduct standard to an express oral contract for a specified
21 term. Khajavi, 100 Cal. Rptr. 2d at 644-645. In Khajavi, an
22 anesthesiologist was hired by a medical group as a temporary doctor
23 pursuant to a written contract. Id. at 632. After that contract
24 expired, the medical group orally offered the doctor a two-year
25 position and promised him that a written contract would be

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27 ⁴ "Wrongful termination claims founded on an explicit
28 promise that termination will not occur except for just or good
cause may call for a different standard, depending on the precise
terms of the contract provision." Cotran, 948 P.2d at 414.

1 forthcoming. Id. at 632-633. Before the contract was prepared, Dr.
2 Khajavi got into an argument about the treatment of a patient with
3 a surgeon who was related to one of the shareholders of the medical
4 group. Not long thereafter, Dr. Khajavi's employment was terminated
5 and he sued the medical group. Id. at 634.

6 As already noted, the Khajavi court recognized that the Cotran
7 holding could be limited to implied employment contracts. The court
8 reasoned good cause in the context of wrongful termination based
9 upon breach of a specified term contract was different from the
10 applicable standard in determining the propriety of a termination
11 under an implied contract. Id. at 644. In part, the court based
12 the distinction upon section 2924:

13 The plain language of this statute—that an employment
14 contract for a specified term may be terminated for a
15 “willful breach of duty,” a “habitual neglect of duty,”
16 or a “continued incapacity to perform”—would not appear
to allow termination for an honest but mistaken belief
that discharge was required.

17 Id. at 645. The court further reasoned that applying the Cotran
18 good faith standard would “run counter to the concept of employment
19 for a specified term.” Id. “What would be the benefit,” the court
20 asked, “of a specified term if the employee could be discharged
21 prior to the end of that term, notwithstanding the employee's
22 compliance with the contract's provisions?” Id. The court held
23 that employment for a specified term may not be terminated prior to
24 the term's expiration, based upon an employer's honest but mistaken
25 belief of misconduct.⁵ Id. at 646-647.

26
27 ⁵ At least one court has criticized the Khajavi court's
28 rationale for treating contracts differently based upon whether
they are express or implied. The court quoted the comment to the
(continued...)

1 Like Cotran, Khajavi contains a footnote that has special
2 relevance to the case before the court. In that footnote, the court
3 notes that its decision does not address the issue whether the
4 express terms of the contract could provide for another basis for
5 termination, or conversely, modify one of the statutory grounds.
6 Id. at 645. Of course, that is precisely what the Trustee is
7 arguing here: that section 2924 is trumped by the parties'
8 fundamental right to negotiate their own contract, including a
9 provision stating the parties' duties and rights in the event of
10 termination. The Trustee contends the parties negotiated a for
11 cause provision that specifies examples of "for cause," but does not
12 define the term. In such a case, according to the Trustee, courts
13 look to Cotran's default definition of good cause.

14 There is some support for the Trustee's argument in the case
15 law interpreting section 2922 and establishing the doctrine of the
16 "for cause" implied contract. In that context, the issue arose as
17 to whether the court's rationale for implied good cause employment
18 contracts undermined the statutory presumption of at-will employment
19 contained in section 2922. In Guz v. Bechtel National, Inc., 8 P.3d
20 1089 (Cal. 2000), the court addressed the issue by reasoning that
21 section 2922 does not deprive parties of their fundamental right to
22 contract and to depart from at-will employment. Guz, 8 P.3d at
23 1100-1101. In Guz, the court states, "[t]he statute does not
24

25 ⁵(...continued)
26 Restatement of Contracts, "[c]ontracts are often spoken of as
27 express or implied. The distinction involves, however, no
28 difference in legal effect, but lies merely in the mode of
manifesting assent." Towson Univ., 384 Md. at 91 (Restatement
(Second) of Contracts § 4 cmt. a (1981)) (emphasis in original).

1 prevent the parties from agreeing to any limitation, otherwise
2 lawful, on the employer's termination rights. Id. at 1100.

3 Also, there is additional support for the Trustee's argument
4 in Justice Mosk's concurrence in Cotran. The Justice was concerned
5 that the adoption of a good faith standard in implied contract cases
6 might be viewed as a limitation on the parties' freedom to contract.
7 Explaining the majority's holding, Justice Mosk stated:

8 [T]here is nothing, of course, in the majority's standard
9 that precludes an employer and an employee from
10 negotiating or impliedly forming a contract with a "good
11 cause" clause that defines that term more explicitly, in
12 which case the jury's good cause determination would be
13 shaped by this contractual definition.

14 Cotran, 948 P.2d at 423 (Mosk, J., concurring). The concurring
15 opinion goes on to state, "[i]n short, the majority's definition of
16 'good cause' is a 'default' definition that applies only in the
17 absence of more specific provisions." Id. at 423 (Mosk, J.,
18 concurring).

19 Here, the Trustee argues section 2924 does not prevent the
20 parties from agreeing to a termination provision that varies from
21 the statute and embodies the parties' freely-negotiated terms. The
22 case that best demonstrates the Trustee's position is Thompson v.
23 Associated Potato Growers, Inc., 610 N.W.2d 53 (N.D. 2000). In
24 Thompson, a case with an express employment agreement, the North
25 Dakota Supreme Court adopted the Cotran standard. Thompson, 610
26 N.W.2d at 57, 59. The employment contract authorized the employer
27 to terminate an employee for any material breach of the employment
28 policies or provisions. The employee was fired after the employer
conducted an investigation and concluded that the employee had been
dishonest. The employee brought a wrongful termination action,

1 arguing that he had not been dishonest and he had not violated the
2 policies or provisions of the employment agreement. Id. at 55-56.
3 After a trial, the court found in favor of the employee and ruled
4 that the employee had been wrongfully discharged. Id. at 56.

5 On appeal, the court concluded that the employee's job could
6 not be terminated except for cause based on the employment
7 agreement. The court, however, reached its conclusion by drawing
8 an inference from the employment agreement, not by applying any
9 express contract terms. The court interpreted a provision that
10 authorized the employer to terminate an employee for, among other
11 reasons, a material violation of the employer's policies. It
12 construed this provision to mean that an employee could not be
13 terminated except for cause. Because the inferred for cause term
14 was not further defined by the contract, the court adopted the good
15 faith standard articulated in Cotran. Id. at 59-60. Here, the
16 Trustee argues for a similar approach to Dr. Lei's employment
17 contract.

18 Obviously, Thompson is distinguishable by the existence in
19 California of section 2924 and case law interpreting it as
20 precluding the application of the Cotran good faith standard to
21 express contracts for a specified term. The stated rationale behind
22 the Khajavi holding is that Cotran's good faith standard runs
23 counter to the concept of employment for a specified term and
24 violates an employee's statutory section 2924 protection. In
25 effect, the Trustee is attempting to circumvent Khajavi by asking
26 this court to adopt Cotran's definition for good cause, which
27 incorporates the Cotran good faith standard. But the Trustee does
28 not cite any California appellate case applying the Cotran good

1 faith standard to an express contract for a specified term.

2 Moreover, we question whether application of the Cotran's good
3 faith standard to the facts of this case would help the Trustee.
4 Among its elements, Cotran requires an investigation, notice, and
5 an opportunity for response. Essentially, the employer is relieved
6 of the difficult task of proving misconduct in exchange for proving
7 an honest and complete investigation. The record before us does not
8 establish that Medical Group's decision to terminate Dr. Lei was
9 "supported by substantial evidence gathered through an adequate
10 investigation that includes notice of the claimed misconduct and a
11 chance for the employee to respond." Cotran, 948 P.2d at 422. In
12 other words, even if the bankruptcy court applied the wrong legal
13 standard, the error would be harmless.

VI. CONCLUSION

15 While Khajavi remains good law, trial courts cannot apply the
16 Cotran good faith standard to express contracts for a specified
17 term.⁶ In this case, the bankruptcy court, like California trial
18 courts, was bound by Khajavi and applied the correct standard for
19 good cause when it determined that Medical Group did not have good
20 cause to terminate Dr. Lei. We affirm the order of the bankruptcy
21 court.

23 6 “Decisions of every division of the District Courts of
24 Appeal are binding upon all the justice and municipal courts and
25 upon all the superior courts of this state, and this is so whether
26 or not the superior court is acting as a trial or appellate court.
27 Courts exercising inferior jurisdiction must accept the law
28 declared by courts of superior jurisdiction. It is not their
function to attempt to overrule decisions of a higher court.”
People v. Hunter, 34 Cal. Rptr. 3d 818, 826 (App. Ct. 2005)
(quoting Auto Equity Sales, Inc. v. Superior Court, 369 P.2d 937,
944 (Cal. 1962)) (citations omitted).